

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANDY SOWELL,

Plaintiff,

-against-

NYSDOCCS ANTHONY J. ANNUCCI, et al.,

Defendants.

22-CV-6538 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, while detained in the Vernon C. Bain Center (“VCBC”), filed this *pro se* action under 42 U.S.C. § 1983, alleging that his multiple detentions pursuant to parole warrants were unlawful. On June 26, 2023, the Court dismissed the action for failure to state a claim but granted Plaintiff 60 days’ leave to replead two discrete claims in a second amended complaint. (ECF 12.) That order stated that failure to file a second amended complaint within the time prescribed would result in the Court entering judgment dismissing the action for the reasons specified in the June 26, 2023 order. Because Plaintiff failed to file a second amended complaint within the prescribed time, judgment was entered on September 25, 2023. (ECF 13.)

On October 20, 2023, the court received from Plaintiff a letter in which he asserted that he was unable to respond to the Court’s June 26, 2023 order granting him leave to file a second amended complaint because staff members from the New York City Department of Correction confiscated his legal papers. (ECF 14.) On October 30, 2023, the Court construed the letter as a motion for reconsideration and granted it. (ECF 17.) The Court vacated the September 25, 2023 civil judgment, reopened this action for further proceedings, and granted Plaintiff an additional 30 days’ leave to submit a second amended complaint as directed by the Court’s June 26, 2023 order. (*Id.* at 3-4.)

On November 28, 2023, the court received a postcard from Plaintiff, in which he asserted that he “was extradited to New Jersey from Rikers Island where [his] constitutional rights are being further violated, and that [he] mailed [his] second amended claim on 11-10-23 from Rikers GRVC.”¹ (ECF 18.) As of this date, however, the Court has not received the second amended complaint that Plaintiff claimed that he mailed while he was still detained at Rikers Island.

In light of Plaintiff’s *pro se* status, the Court will grant him one last opportunity to comply with the Court’s June 26, 2023 order. Plaintiff is granted 30 days’ leave to file a second amended complaint. No further extensions will be granted.

CONCLUSION

The Court grants Plaintiff an additional 30 days’ leave to submit a second amended complaint as directed by the Court’s June 26, 2023 order.

If Plaintiff fails to file a second amended complaint within the prescribed time and he cannot show good cause for such failure, the Court will enter judgment dismissing the action for failure to state a claim on which relief may be granted, 28 U.S.C. § 1915(e)(2)(B)(ii), and declining to exercise supplemental jurisdiction of any state law claims Plaintiff may be asserting, 28 U.S.C. § 1367(c)(3).

Plaintiff must also update the court, in writing, with his new address.

The Clerk of Court is directed to mail a copy of this order to Randy Sowell, Inmate No. 49802, Booking # 15975, Cape May Correctional Facility, 125 Crest Haven Rd, Cape May, NJ 08210.

¹ Plaintiff did not include a forwarding address on the postcard. Public records maintained by the Cape May County Sheriff’s Office, however, indicate that Plaintiff is presently detained at the Cape May Correctional Facility. Plaintiff is directed to provide an updated address to the court.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: January 3, 2024
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge